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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE OCEAN ATLANTIC (SECOND)
LOAN**

Hearing Date: October 18, 2011

Hearing Time: 1:30 p.m.

Estimated Time for Hearing: 10 minutes

1. I am an adult person competent to testify in court.

2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

1 4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting
2 funding for an acquisition and development loan to a borrower identified as “Ocean
3 Atlantic/PFG-Westbury, LLC.” A copy of the Offer Sheet is attached hereto as **Exhibit**
4 **B** and incorporated by this reference. The total loan amount proposed was \$2,700,000.
5 The Offer Sheet described the investment as a “Subordinated Trust Deed Investment” and
6 noted that the investment would be secured by a second deed of trust on approximately
7 175 acres of land on the northwest corner of Illinois Route 47 and Corneils Road in
8 Yorkville, Illinois.

9 5. The Offer Sheet also provided a loan to value of 68% based on an appraisal
10 by Argianas and Associates, dated February 25, 2005, however, counsel for the Trustee
11 has not been able to locate a copy of the appraisal.

12 6. On November 1, 2005, Borrower made and delivered to various lenders,
13 including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by
14 Mortgage” (the “Note”) and a Construction Loan Agreement. The Note and Loan
15 Agreement provided for a loan in the principal amount of \$2,700,000.

16 7. The Loan Agreement provided that the loan was intended to refinance the
17 real property, and for engineering and legal costs for entitlements and land development.
18 The Note was secured by a Mortgage, Assignment of Rents, Security Agreement and
19 Fixture Filing, (the “Mortgage”) that was recorded in the official records of Kendall
20 County, Illinois on November 14, 2005.

21 8. The USACM “Loan Summary” dated July 31, 2006 and filed in this case
22 shows that Borrower was Performing on the Note as of July 31, 2006. The USACM
23 “Loan Summary” dated February 28, 2007 and filed in this case shows that Borrower was
24 in “Interest Default” as of February 28, 2007.
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26

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Dated: September 16, 2011

3
4 /s/ Geoffrey L. Berman

Geoffrey L. Berman

5
6 Copy of the foregoing mailed (without
7 Exhibits) by first class postage prepaid
8 U.S. Mail on September 16, 2011 to
9 All investors listed on Exhibit A
Attached.

10 s/ Matt Burns

11 Matt Burns, Paralegal
12 Lewis and Roca LLP
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